

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JUSTIN VALK,

Plaintiff,

3:24-cv-3 (BKS/ML)

v.

JOHN L. HUBBARD and
SHAWN SMITH,

Defendants.

Appearances:

Plaintiff pro se:

Justin Valk

#9033

Delaware County Correctional Facility

280 Phoebe Lane, Suite 6

Delhi, NY 13753

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Plaintiff Justin Valk brings this action under 42 U.S.C. § 1983, and asserts that defendants John Hubbard and Shawn Smith, district attorneys in the Delaware County District Attorney Office, subjected him to malicious prosecution in violation of the Fourth Amendment. (Dkt. No. 1). Plaintiff also filed a motion to proceed *in forma pauperis* (“IFP”). (Dkt. Nos. 1, 2, 3). This matter was referred to United States Magistrate Judge Miroslav Lovric who, on April 3, 2024, granted Plaintiff’s application to proceed IFP, and issued a Report-Recommendation, recommending that Plaintiff’s complaint be dismissed with leave to replead. (Dkt. No. 5). Plaintiff was informed that he had fourteen days within which to file written objections to the

Report-Recommendation under 28 U.S.C. § 636(b)(1), and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 10). Plaintiff filed objections on April 15, 2024. (Dkt. No. 6). For the reasons set forth below, the Report-Recommendation is adopted in its entirety.

II. STANDARD OF REVIEW

This court reviews *de novo* those portions of the Magistrate Judge’s findings and recommendations that have been properly preserved with a specific objection. *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); 28 U.S.C. § 636(b)(1)(C). “A proper objection is one that identifies the specific portions of the [report-recommendation] that the objector asserts are erroneous and provides a basis for this assertion.” *Kruger v. Virgin Atl. Airways, Ltd.*, 976 F. Supp. 2d 290, 296 (E.D.N.Y. 2013) (internal quotation marks omitted). Properly raised objections must be “specific and clearly aimed at particular findings” in the report. *Molefe v. KLM Royal Dutch Airlines*, 602 F. Supp. 2d 485, 487 (S.D.N.Y. 2009). “[E]ven a pro se party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal” *Machicote v. Ercole*, No. 06-cv-13320, 2011 WL 3809920 at *2, 2011 U.S. Dist. LEXIS 95351, at *4 (S.D.N.Y. Aug. 25, 2011) (citation omitted). Findings and recommendations as to which there was no properly preserved objection are reviewed for clear error. *Id.* To the extent a party makes “merely perfunctory responses, argued in an attempt to engage the district court in a rehashing of the same arguments” in the original submission, the Court will only review for clear error. *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

III. DISCUSSION

In the Report-Recommendation, Magistrate Judge Lovric recommended that the complaint be dismissed on the grounds that, among other things: (1) the complaint was “entirely

lacking in factual allegations” and contained only “the threadbare elements of a malicious prosecution claim,” and therefore failed “to give Defendants fair notice of the claims against them,” (Dkt. No. 5, at 5); (2) the claims against Defendants in their official capacity are barred by Eleventh Amendment immunity, (*id.* at 6); and (3) the claims against Defendants, both of whom are district attorneys, “are likely barred by the doctrine of prosecutorial immunity,” (*id.* at 7).

In his “objection” to the Report-Recommendation, Plaintiff writes as follows: “I am objecting to the dismissal of the complaint as I am currently working on an amended complaint.” (Dkt. No. 6, at 1). Even construed liberally, Plaintiff’s “objection” does not identify any particular finding in the Report-Recommendation to which Plaintiff objects. Thus, the Court reviews for clear error. *Machicote*, 2011 WL 3809920 at *2, 2011 U.S. Dist. LEXIS 95351, at *4; *Ortiz*, 558 F. Supp. 2d at 451. Accordingly, having reviewed for clear error and having found none, the Report-Recommendation is adopted in its entirety for the reasons stated therein.

IV. CONCLUSION

For these reasons, it is hereby

ORDERED that Magistrate Judge Lovric’s Report-Recommendation (Dkt. No. 5) is **ADOPTED**; and it is further

ORDERED that Plaintiff’s complaint (Dkt. No. 1) is **DISMISSED** with leave to replead; and it is further


ORDERED that any amended complaint must be filed **within thirty (30) days** of the date of this Order. Any amended complaint must be a complete pleading which will replace the current complaint in total; and it is further

ORDERED that if Plaintiff files a timely amended complaint, it shall be referred to Magistrate Judge Lovric for review; and if Plaintiff fails to file a timely amended complaint, the Clerk is directed to close this case; and it is further

ORDERED that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: April 30, 2024
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge